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No. 91-710

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

RALPH E. RISHEL, consolidated with
THOMAS P. CATON,
Petitioners,

v.

UNITED MINE WORKERS OF AMERICA
HEALTH AND RETIREMENT FUNDS,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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BRIEF IN OPPOSITION OF UNITED MINE WORKERS OF AMERICA HEALTH AND RETIREMENT FUNDS

DAVID W. ALLEN *
General Counsel
ANDRÉE M. ST. MARTIN
Associate General Counsel
ANGELA T. KENNEDY
Senior Associate Counsel
REGINA M. PIZZONIA
Senior Associate Counsel

UMWA Health and Retirement Funds
Office of General Counsel
4455 Connecticut Avenue, N.W.
Washington, D.C. 20008
(202) 895-3737
Attorneys for Respondents

Dated: November 26, 1991 * Counsel of Record

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

QUESTION PRESENTED FOR REVIEW

Whether the Court of Appeals erred in affirming summary judgment for the United Mine Workers of America Health and Retirement Funds, on the ground that the Funds' decision to deny the pension application of Ralph E. Rishel was neither arbitrary nor capricious.

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BRIEF IN OPPOSITION OF UNITED MINE WORKERS OF AMERICA HEALTH AND RETIREMENT FUNDS

COUNTER-STATEMENT OF THE CASE

Statement of Proceedings

On or about August 16, 1988, the Petitioners, Ralph E. Rishel and Thomas P. Caton, filed separate actions in the United States District Court for the Western District of Pennsylvania alleging that the Respondent, the United Mine Workers of America Health and Retirement Funds,[1]

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[1] The "United Mine Workers of America Health and Retirement Funds" ("Funds") is the collective name for five irrevocable employee benefit trusts established under Article XX of the National Bituminous Coal Wage Agreement ("NBCWA") in accordance with Section 302(c) of the Labor-Management Relations Act of

had arbitrarily and capriciously denied their pension applications. (App. pp. 5a-8a.)[2] By Answers filed September 23, 1988, the Funds denied that Rishel and Caton are eligible for a service pension. (App. pp. 29a-32a.)

Rishel's action was assigned to Judge Mencer, and Caton's action was assigned to Judge McCune. By Orders dated August 17, 1988, Judges Mencer and McCune referred these actions to Magistrate Sensanich. The Funds subsequently filed cross-motions for summary judgment with Rishel and Caton. (App. pp. 347a-349a). By Report and Recommendation dated November 26, 1990, the Magistrate recommended granting the Funds' Motion for Summary Judgment. (App. pp. 480a-488a.). By Memorandum Order dated January 8, 1991, Judge Mencer adopted the Magistrate's recommendation. (App. pp. 497a-498a.) By Memorandum Order dated January 31, 1991, Judge McCune adopted the Magistrate's recommendation. Appeals to the Court of Appeals for the Third Circuit were noted by Rishel and Caton on February 4, 1991. (App. p. 1a.) These appeals were subsequently consolidated on March 19, 1991 and the Third Circuit affirmed the judgment of the District Court by opinion filed June 11, 1991. The pertinent facts underlying Rishel and Caton's situations are identical; consequently, only Rishel's situation is discussed herein.

Statement of the Facts

Ralph E. Rishel worked as a trucker for Wolfe & Wolfe Trucking Company ("Wolfe & Wolfe") from March 1954 to May 1984. (App. p. 458a.)[3] On or about March 20,

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1947, 29 U.S.C. § 186(c). *UMWA Health and Retirement Funds v. Robinson*, 455 U.S. 562, 566 (1982).

[2] References to the Joint Appendix filed in the Court of Appeals will be cited as "App. p. ——."

[3] Thomas P. Caton worked as a trucker for Wolfe & Wolfe from July 15, 1973 to February 15, 1983. *See* Caton's Pension File, pp. ———.

1985, Rishel applied to the UMWA 1974 Pension Trust ("1974 Pension Trust")[4] for a service pension based on his employment with Wolfe & Wolfe. (App. pp. 456a-459a.) The Trustees of the 1974 Pension Trust subsequently notified Rishel that his application for a service pension had been denied. (App. p. 446a.) The Trustees based this denial on the following facts and analysis:

Wolfe & Wolfe was a trucking company. It contracted with Martin-Marietta Aggregates ("Martin-Marietta") and Benwood Limestone to, *inter alia*, haul supplies, including rock dust, from Martin-Marietta and Benwood Limestone to various businesses, including signatory coal mines and other businesess outside the coal industry. (App. pp. 367a, 398a.)[5] Articles IV.A(1) and B (1)(a) of the UMWA 1974 Pension Plan ("1974 Pension Plan"), the document that contains the eligibility criteria for the 1974 Pension Trust, state that credit shall be given towards a service pension only for employment "for an employer in the coal industry . . ." (App. pp. 405a-406a.) Because Wolfe & Wolfe was not a "coal industry employer," the Trustees were required to deny Rishel's service pension application. (App. p. 446a.)

R2, R4. (A copy of Caton's Pension File is attached to Defendants' Memorandum of Points and Authorities in Support of Defendants' Motion for Summary Judgment in C.A. No. 88-1820 as Exhibit A.)

[4] The 1974 Pension Trust is one of the five separate collectively bargained trusts collectively referred to as the "Funds." *See UMWA Health and Retirement Funds v. Robinson*, 455 U.S. 562, 563-66 (1982).

[5] Wolfe & Wolfe was signatory to the National Bituminous Coal Wage Agreement (App. p. 431). It, therefore, automatically deducted union dues from Rishel's paycheck to be sent to the UMWA. (App. p. 430a.) The UMWA, which is one of the two settlors of the five trusts that comprise the Funds, is separate and distinct from the Funds. Dues that the UMWA receives on behalf of classified employees in no way affect any of the five trusts that collectively comprise the Funds.

Rishel subsequently filed this action pursuant to Section 502 of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1132, and Section 301 of the Labor Management Relations Act of 1947, 29 U.S.C. § 185, alleging that the Trustees of the 1974 Pension Trust had acted arbitrarily and capriciously in denying his service pension application. (App. pp. 5a-8a.)

SUMMARY OF ARGUMENT

(1) Under this Court's decision in *Firestone Tire & Rubber Co. v. Bruch*, 455 U.S. 562 (1982), a deferential review of Rishel's pension denial is appropriate because the Trustees have been granted the discretion to determine benefit eligibility. (2) Because he did not raise the issue below and cannot establish that his is an "exceptional case," Rishel may not now assert that the lower court did not apply the proper deferential standard. (3) The well settled arbitrary and capricious standard does not require elaboration by this Court. (4) The lower courts properly determined that the Trustees were not arbitrary and capricious in concluding that Rishel's employer was not a coal industry employer within the meaning of the UMWA 1974 Pension Plan, and that Rishel was therefore ineligible for benefits from that Plan.

ARGUMENT

I. THE STANDARD OF REVIEW PRESENTS NO ISSUE WORTHY OF THIS COURT'S REVIEW

A. A Deferential Standard Is Applicable in This Case

The trustees of an employee pension plan, such as the 1974 Pension Plan, have a fiduciary obligation to administer that plan in accordance with the governing plan documents and to pay benefits only to eligible participants. 29 U.S.C. § 1104(a)(1)(D). *See UMWA Health and Retirement Funds v. Robinson*, 455 U.S. 562, 573-74 (1982). Traditionally, judicial review of a trustee's decision concerning eligibility for pension benefits was limited to a determination of whether that decision was arbitrary and capricious, not supported by substantial evidence, or contrary to law. *See Gaines v. Amalgamated Insurance Fund*, 753 F.2d 288, 289 (3d Cir. 1985); *see also Wolf v. National Shopmen Pension Fund*, 728 F.2d 182, 187 (3d Cir. 1984); *Rosen v. Hotel and Restaurant Employees and Bartenders Union*, 637 F.2d 592, 596, n.5 (3d Cir.), *cert. denied*, 454 U.S. 898 (1981).

However, in *Firestone Tire and Rubber Co. v. Bruch*, 489 U.S. 101 (1989), this Court held that review of a trustee's interpretation of a plan should be *de novo* unless the plan documents conferred on the trustees discretion in determining benefit eligibility. The plan currently before the Court, the 1974 Pension Plan, contains language that clearly grants the trustees of that plan sufficient discretion to preclude *de novo* review. Article VIII.A of the 1974 Pension Plan states that:

> The Trustees or such other named fiduciaries as may be properly designated shall have full and final determination as to all issues concerning eligibility for benefits.

(App. p. 299a.) Article VIII.B(1) further provides that:

> The Trustees are authorized to promulgate rules and regulations to implement this Plan, and those rules

> and regulations shall be binding upon all persons dealing with and Participants claiming benefits under this Plan.

(App. p. 300a.) Thus, Articles VIII.A and B(1) of the 1974 Pension Plan clearly reflect the intent of the Plan's settlors to confer discretion to determine eligibility on the Trustees.[6] The District Court and the Court of Appeals properly concluded that the appropriate standard of review for decisions under the 1974 Pension Plan is a deferential one. This is consistent with the deferential review accorded the decisions under the 1974 Plan (or its sister plan with identical language) in the Fourth and Sixth Circuits. See *Boyd v. Trustees of the UMWA Health and Retirement Funds*, 873 F.2d 57, 59 (4th Cir. 1989) and *Baker v. UMWA Health and Retirement Funds*, 929 F.2d 1140 (6th Cir. 1991).[7]

Following the Court's decision in *Firestone*, the Third Circuit has held that when a plan contains provisions which give the administrator discretion in making eligibility determinations, the arbitrary and capricious standard applies. *Stoetzner v. U.S. Steel Corp.*, 897 F.2d 115, 119 (3d Cir. 1990). Although he did below, Rishel

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[6] The UMWA and the Bituminous Coal Operators Association ("BCOA"), an organization representing a number of bituminous coal industry employers, are the settlors of the 1974 Pension Trust. The terms of the 1974 Pension Plan are collectively bargained. See *UMWA Health and Retirement Funds v. Robinson*, 455 U.S. 562 (1982).

[7] In *Firestone*, this Court indicated that evidence of conflict of interest on the part of the plan trustee could affect the deference otherwise given his decision. 489 U.S. at 115. Rishel has not claimed, nor could he, that the Trustees suffer from a conflict of interest. The Plan is collectively bargained. The Labor Management Relations Act of 1947 requires an equal number of union and employer appointed trustees. 29 U.S.C. § 186. The Trustees are appointees of the UMWA and coal employers. They do not profit by the denial of claims, and must exercise their authority under the Plan "solely in the interest of the participants and beneficiaries." 29 U.S.C. § 1104(a).

does not now contest that the 1974 Pension Plan grants sufficient discretion to the Trustees so as to render deferential judicial review appropriate. (Petition at pp. 11-14).

The "question presented" by Rishel in his Petition is whether the Trustees' denal of his pension application under the terms of the 1974 Pension Plan was arbitrary or capricious or an abuse of discretion. (Petition at pp. 1-2). While certainly important to the two individuals involved, the Trustees' interpretation of the Plan's "coal industry" requirement does not raise an issue of federal law worthy of this Court's review.

In an attempt to create a "cert worthy" issue, Rishel "suggests that the ruling of the Circuit Court is one which is a departure from the accepted and usual course of judicial proceedings in that the Court has accepted at face value the reasons of the Funds which reasoning demonstrates arbitrary and capricious thought processes." (Petition at p. 11.) This, however, is only a restatement of Rishel's basic complaint—that the terms of the 1974 Pension Plan were improperly interpreted to deny him a pension.

B. Rishel Cannot Now Allege that the "Arbitrary and Capricious" Standard Is Not the Appropriate Deferential Standard

Rishel also asserts that "an important Federal question as to definition of the standard of review of trustees action after *Firestone Tire & Rubber Company v. Burch* [*sic*], 489 U.S. 101 (1989) case still needs to be decided and a standard for arbitrary and capricious conduct under ERISA needs to be articulated." (Petition at pp. 11-12).

In *Firestone*, this Court held that a trustee's decision must be reviewed *de novo* under ERISA unless discretion had been granted that trustee under the plan documents. 489 U.S. at 115. If discretion is granted, the reviewing court must give deference to the trustee's decision. It is

not clear whether Rishel intends to challenge the arbitrary and capricious standard as the appropriate deferential standard for cases in which discretion has been granted the trustee, or whether he only wishes to have this Court further "articulate" the "arbitrary and capricious" standard.

To the extent that Rishel is alleging that the arbitrary and capricious standard is not the appropriate standard for cases in which discretion is conferred upon a trustee, he raises that challenge now for the first time.[8] Arguments or objections not raised in the lower courts should not be raised for the first time in this Court. *California v. Taylor, et al.*, 353 U.S. 553, 556, n.2 (1957); *United States v. Donnelly*, 397 U.S. 286, 319, n.5 (1970); *Singleton v. Wulff*, 428 U.S. 106 (1976). The Trustees clearly had no opportunity to offer arguments in support of the arbitrary and capricious standard because Rishel did not in the lower courts contend that it was not the appropriate deferential standard.

Only in "exceptional cases" will this Court decide questions not raised or decided in the lower courts. *Duignan*

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[8] At no point below did Rishel assert that when deferential review was authorized under *Firestone*, the standard was anything other than "arbitrary and capricious." In his complaint, Rishel alleged that the Trustees acted arbitrarily and capriciously in denying his pension. (App. p. 8a.) While Rishel initially claimed that a *de novo* review was required, he also recognized that if a deferential standard was called for under *Firestone*, that standard was arbitrary and capricious. (App. p. 468a.) The District Court held that the arbitrary and capricious standard was applicable because the plan documents granted discretion to the Trustees to interpret its terms. (App. pp. 498a, 483a.) In the Court of Appeals, Rishel asserted that a *de novo* review was required, but argued that if a deferential standard was to be applied, the Trustees should be held to have been arbitrary and capricious. (Appellant's Brief at p. 8.) Once it was determined that the Trustees were granted discretion under the Plan, neither the District Court nor the Court of Appeals considered any standard other than the "arbitrary and capricious" standard adopted in the Third Circuit because Rishel did not raise the issue.

v. United States, 274 U.S. 195 (1927).[9] This case is not an "exceptional case." Indeed, it is not even clear that there is an issue as to the appropriate deferential standard. Rishel does not assert that the "arbitrary and capricious" standard applied by the lower courts was the wrong standard, nor does he suggest an alternative standard. Instead, he simply notes that the ". . . definition of the standard of review applicable after the *Firestone* . . . case still needs to be decided . . ." (Petition at p. 12). Because Rishel did not contend below that the "arbitrary and capricious" standard was not the appropriate deferential standard and because his is not an "exceptional case," he should not be allowed to raise the issue for the first time in this Court.

C. The "Arbitrary and Capricious" Standard Has Been Sufficiently "Articulated"

Rishel also asserts for the first time in his Petition that ". . . a standard for arbitrary and capricious conduct under ERISA needs to be articulated." (Petition at p. 12). Rishel does not propose a new definition for "arbitrary and capricious" nor does he assert that the definition used by the courts since ERISA's enactment is inappropriate for situations in which the plan documents grant the requisite discretion to plan trustees.

This strained attempt to create an issue of importance for this Court is misguided. The "arbitrary and capricious" standard under ERISA was well-developed prior to the *Firestone* decision. See Comment, *The Arbitrary and Capricious Standard Under ERISA: Its Origins and Application*, 23 Duquesne L. Rev. 1033, 1037-1039 (1985). While *Firestone* held that trustees' decisions should be

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[9] See *Glidden Co. v. Zdanok, et al.*, 370 U.S. 530, 536 (1962) (allowed challenge to constitutional authority of judicial appointment); *Youakim v. Miller*, 425 U.S. 231 (1976) (remands issue of conflict between state law and Social Security Act raised first in Supreme Court).

reviewed *de novo* unless the plan gives them discretion, nothing in the decision suggests that the decisions of trustees to whom discretion has been granted should not continue to be reviewed under the arbitrary and capricious standard. 489 U.S. at 109 (rejects only "wholesale" adoption of arbitrary and capricous standard). Under the traditional arbitrary and capricious standard, the court determined ". . . whether the challenged decision resulted from a 'consideration of the relevant factors and whether there has been a clear error of judgment.'" *Wolf v. National Shopmen Pension Fund*, 728 F.2d 182 (3d Cir. 1984) *quoting Bowman Transportation, Inc. v. Arkansas-Best Freight System, Inc.*, 419 U.S. 281, 285 (1984). A plan trustee's decision was upheld unless the court found that it was not "rational." *Id.*, *quoting Federal Communications Commission v. National Citizens Committee for Broadcasting*, 436 U.S. 775 (1978).

Following *Firestone*, most circuits have continued to apply this traditional standard when reviewing the decisions of trustees on whom discretion has been conferred.[10] In some cases, this standard is labeled "abuse of discretion" and in others "arbitrary and capricious." Some courts use the terms interchangeably. These courts have upheld a trustee's interpretation of a plan unless it is "unreasonable" or "irrational." See *Curtis v. Noel*, 877

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[10] In articulating the post-*Firestone* deferential standard, most courts rely upon pre-*Firestone* "arbitrary and capricious" formulations. See *Batchelor v. International Brotherhood of Elec. Workers Local 861 Pension and Retirement Fund*, 877 F.2d 441, 444 (5th Cir. 1989); *Miller v. Metropolitan Life Ins. Co.*, 925 F.2d 979, 984 (6th Cir. 1991); *Saracco v. Local Union 286 Pension Fund*, 942 F.2d 1213, 1215 (7th Cir. 1991); *Oldenburger v. Central States Southeast and Southwest Areas Pension Fund, et al.*, 934 F.2d 171, 173 (8th Cir. 1991); *Johnson v. Trustees of Western Conf. of Teamsters Pension Trust Fund*, 879 F.2d 651, 654 (9th Cir. 1989); *Woolsey v. Marion Laboratories, Inc.*, 934 F.2d 1452, 1457 (10th Cir. 1991); *Guy v. Southeastern Iron Workers' Welfare Fund*, 877 F.2d 37, 39 (11th Cir. 1989).

F.2d 159, 161 (1st Cir. 1989) (deferential review); *Miller v. Metropolitan Life Insurance Company*, 925 F.2d 979, 985 (6th Cir. 1991) (arbitrary and capricious); *Lister v. Stark*, 942 F.2d 1183, 1188 (7th Cir. 1991) (declines to choose); *Oldenburger v. Central States Southeast and Southwest Areas Teamster Pension Fund, et al.*, 934 F.2d 171, 173 (8th Cir. 1991) (arbitrary and capricious); *Woolsey v. Marion Laboratories, Inc.*, 934 F.2d 1452, 1457 (10th Cir. 1991) (arbitrary and capricious); *Anderson v. Blue Cross/Blue Shield of Alabama*, 907 F.2d 1072, 1075-76 (11th Cir. 1990) (synonymous).

Some courts have provided additional guidance for applying this deferential standard, and have looked to pre-*Firestone* cases to do so. The Tenth Circuit has stated that the trustees' decision "need not be the only logical one nor even the best one. It need only be sufficiently supported by facts within their knowledge to counter a claim that it was arbitrary or capricious." *Woolsey*, 934 F.2d at 1460. The Fifth and Eleventh Circuits have recognized some factors which are helpful in assessing trustees' decisions, including the uniformity of the trustees' construction, its consistency with a fair reading of the plan, and any unanticipated costs associated with the applicant's interpretation. *Guy v. Southeastern Iron Workers' Welfare Fund*, 877 F.2d 37, 39 (11th Cir. 1989); *Jordan v. Cameron Iron Works, Inc., et al.*, 900 F.2d 53, 56 (5th Cir. 1990), *cert. denied*, 112 L.Ed.2d 308. The Seventh Circuit has stated that a trustee's decision will not be upheld if "the evidence demonstrates that he failed to consider an important aspect of the problem, offered an explanation which runs counter to the evidence or is so implausible that it could not be ascribed to a difference in view or the product of expertise." *Lister v. Stark*, 942 F.2d at 1189. In the Sixth Circuit, courts ask whether the trustee's decision was the result of deliberative, principled reasoning process and was supported by substantial evidence. *Baker*, 929 F.2d at 1144.

As illustrated by these post-*Firestone* cases, there is no shortage of guidance for applying the "arbitrary and capricious" standard. Rishel cannot demonstrate a need for this Court to further elaborate on the "arbitrary and capricious" standard. The post-*Firestone* cases make clear that the standard is one of "reasonableness" as it was prior to *Firestone*. Rishel does not challenge this standard. His desire to have this court "articulate" a standard for arbitrary and capricious conduct simply reflects his disappointment with the results of the lower courts' review in his case, and not a dearth of guidance on the issue. The "arbitrary and capricious" standard is a venerable and workable standard. It does not require "articulation," particularly in a case in which the issue is raised for the first time in this Court.

II. THE DENIAL OF RISHEL'S PENSION APPLICATION WAS NOT ARBITRARY AND CAPRICIOUS

The Trustees did not act arbitrarily or capriciously in denying Rishel's service pension application. Their interpretation of the 1974 Pension Plan was neither "unreasonable" nor "irrational". Articles IV.A(1) and B(1)(a) of the 1974 Pension Plan direct the Trustees to award pension credit for classified employment in the coal industry. Article IV.A(1) states in pertinent part that:

> A Participant shall receive credit for a year of [non-signatory] service for any calendar year in which he worked, subsequent to December 31, 1936, as an employee in a job classified in the then existing bituminous coal wage agreement *for an employer in the coal industry* . . . .

(Emphasis added.) (App. p. 291a.) Article IV.B(1)(a) further provides that *signatory* service also is earned only by working for a coal industry employer. (App. p. 371a.)

Thus, Article IV.A(1) and B(1) provide that an applicant for a service pension must demonstrate that he performed classified work *and* that that work was per-

formed for a coal industry employer. Thus, it is not sufficient that Rishel performed classified work [11] or even that he worked in or about coal mines. Rishel must also demonstrate that his employer is a coal industry employer. Rishel's employer, Wolfe & Wolfe, is not a coal industry employer. Wolfe & Wolfe does not produce, process, prepare, or transport coal. Wolfe & Wolfe simply delivers the products of Martin Marietta and Benwood Limestone to the customers of those suppliers, some of whom happen to be coal companies. In fact, Wolfe & Wolfe does not even perform a service for or contract with a coal company. Thus, Wolfe & Wolfe is no more a coal industry employer than is UPS when it makes deliveries to coal companies on behalf of suppliers. Both UPS and Wolfe & Wolfe are trucking companies that provide services to suppliers, not to coal companies. This relationship to the coal industry is simply too attenuated to render Wolfe & Wolfe a coal industry employer.

Because Rishel fails to understand the distinction between classified employment and coal industry employment, he relies on the Trustees' award of pension credit to employees of Torrance Trucking to support his claim that he should receive pension credit for his employment at Wolfe & Wolfe. The Trustees awarded credited service to employees of Torrance Trucking Company ("Torrance Trucking"), a signatory trucking company that had contracted directly with signatory coal companies to deliver supplies to them. (App. p. 367a). Rishel argues that he performed the same type of duties as the employees of Torrance Trucking who received pension credit. However, Rishel was denied a service pension not because of the type of work that *he* performed but because of the nature of *his employer's* relationship to the coal industry. The Trustees have consistently recognized this distinction. In Question and Answer ("Q&A") 60, the

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[11] This is obvious; otherwise any laborer or trucker in any industry could claim a pension.

Trustees have provided that an employee of a signatory trucking company qualifies for pension credit while hauling mine refuse from the tipple to the slate dump for a signatory coal company. (App. p. 409a.)[12] By implication, had the trucking company been hauling for someone other than a coal company, no pension credit would accrue. This explains the Trustees' award of credit to the employees of Torrance Trucking, which had contracted directly with a signatory coal company, but not to employees of Wolfe & Wolfe, which had contracted with an intermediate supplier.

Rishel also asserts that the Trustees denied him pension credit for his work at Wolfe & Wolfe because the Trustees failed to collect pension contributions from the company. To the contrary, the Trustee did not "fail" to collect contributions from Wolfe & Wolfe. They determined that Wolfe & Wolfe owned no such contributions for the same reason that its employees are ineligible for pension credit. (App. p. 437a.) An employer, even one signatory to a collective bargaining agreement, owes contributions to the 1974 Pension Trust only if that employer is a coal industry employer. If it is determined that an employer is within the coal industry, pension credit is granted whether or not the plan is actually able to collect the contributions the employer owes the Plan. However, when, as here, the Trustees determine that an employer is not a coal industry employer, contributions may not be assessed nor pension credit awarded. The denial of pension credit is not based upon a failure to collect contributions but rather on the fact that the em-

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[12] Article VIII. B(1) of the 1974 Pension Plan grants the Trustees of the 1974 Pension Trust authority to "promulgate rules and regulations to implement this Plan, and those rules and regulations shall be binding upon all persons dealing with Participants claiming benefits under this Plan." (App. p. 300a.) Accordingly, the Trustees have developed a series of Questions and Answers, commonly referred to as "Q&A"s, to interpret and implement the 1974 Pension Plan.

ployer is not in the coal industry as required by Article IV.A(1) and B(1)(a) of the 1974 Pension Plan.

The 1974 Pension Plan obviously does not cover every employee of every business entity that may have some contact with companies that produce or process coal. Instead, Articles IV.A(1) and B(1)(a) of the 1974 Pension Plan indicate that service credit will only be granted for work performed for a "coal industry" employer. In the instant case, Wolfe & Wolfe's relationship with the coal industry is simply too attenuated to render it a coal industry employer. Wolfe & Wolfe was a trucking company, one of whose customers was a supplier to coal companies and others. The Trustees of the 1974 Pension Trust properly concluded that Wolfe & Wolfe was not a "coal industry" employer within the meaning of the 1974 Pension Plan. Thus, they properly declined to assess contributions against Wolfe & Wolfe and were required to deny pension credit to its employees. The Trustees' interpretation of the 1974 Pension Plan to deny coverage to Rishel was based upon a principled reasoning process and was properly sustained by the lower courts.

CONCLUSION

While it is undeniably significant to him, Rishel's pension denial does not raise a substantial federal issue worthy of this Court's review. Rishel's attempt to raise an issue respecting the standard of review must be rejected because he failed to raise that issue below. Accordingly, the Trustees respectfully submit that Rishel's Petition for Certiorari should be denied.

Respectfully submitted,

DAVID W. ALLEN *
General Counsel
ANDRÉE M. ST. MARTIN
Associate General Counsel
ANGELA T. KENNEDY
Senior Associate Counsel
REGINA M. PIZZONIA
Senior Associate Counsel

UMWA Health and Retirement Funds
Office of General Counsel
4455 Connecticut Avenue, N.W.
Washington, D.C. 20008
(202) 895-3737
Attorneys for Respondents

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* Counsel of Record